



CITY OF OPPORTUNITY

CITY OF OREGON OHIO

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Tina Evans, Clerk of Council

tevans@oregonohio.org

March 1, 2016

Robert A. Kaplan
U.S. EPA Region 5 – Chicago
77 W. Jackson Blvd., Ste 1600
Chicago, IL 60604

Dear Mr. Kaplan:

Enclosed is a copy of Resolution 025-2016 passed by Oregon City Council on February 22, 2016. This Resolution is requesting the State of Ohio and USEPA designate the Western Basin of Lake Erie as impaired. We strongly feel that this designation will trigger a Total Maximum Daily Load report that will identify nutrient sources.

Please review the Resolution, and feel free to contact me if you have any questions or would like to discuss this with a member of Oregon City Council.

Thank you.

Regards,

Tina M. Evans
Clerk of Council

Enclosure



City of Oregon, Ohio, 5330 Seaman Road, Oregon, OH 43616-2633

Resolution No. 025 - 2016

**Resolution Requesting The State Of Ohio And USEPA To
Designate The Western Basin Of Lake Erie As Impaired**

Whereas, the Cities of Oregon and Toledo, Carroll Township, Ottawa County and others commendably tested and treated for harmful algae related toxins to protect public health before there were any regulatory requirements for them to do so, and

Whereas, western Lake Erie communities are investing millions of dollars in chemicals and equipment to treat and test for the toxins coming from Western Lake Erie harmful algae blooms, with these significant costs borne by the water customers and state, local and federal taxpayers, and

Whereas, the open waters in the western Lake Erie watershed are the source of the harmful algae related microcystin toxins that have entered public drinking water intakes in the region, and

Whereas, a measurable and accountable Western Lake Erie Harmful Algae reduction plan to reduce harmful algae sources is outlined in the Clean Water Act, and begins with the designation of the western Lake Erie watershed as impaired, and

Whereas, the goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." The USEPA lists 43,000 waters in the United States as impaired under the Clean Water Act 303d list. The State of Ohio lists 273 waters impaired including 289 miles of Lake Erie shoreline (nearshore) and the nearshore waters to the Oregon and Toledo public drinking water intakes, but fails to include the open western Lake Erie source watershed, and

Whereas, the Clean Water Act requires states to submit a biennial assessment of their waters. The next report from Ohio to USEPA is due in 2016, and

Whereas, the designation of western Lake Erie watershed as impaired will trigger a Total Maximum Daily Load(TMDL) report, which will identify nutrient sources and amounts followed by a federal, state, local government and other stakeholder Implementation Plan that will publicly report nutrient reduction progress or the lack thereof annually or biennially.

Resolution

~~Ordinance No.~~ 025-2016 Item No. 025-2016

City of Oregon, Ohio, 5330 Seaman Road, Oregon, OH 43616-2633

Now, Therefore, Be It Resolved By The Council Of The City Of Oregon, Ohio, That:

Section 1. That the City of Oregon requests the State of Ohio and the United States Environmental Protection Agency to declare the Western Lake Erie watershed to be impaired under Section 303(d) of the Clean Water Act.

Section 2. That this Resolution shall be in force and effect at the earliest date allowed by law.

Section 3. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and its committees that resulted in such formal actions, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Revised Code of Ohio and that the reading and adoption of this Resolution complies with the provisions of Article III, Section 9 of the City Charter, as amended.

Vote on Passage

Yeas 7 Nays 0 Abs. 0

Passed this 22nd day of February, 2016

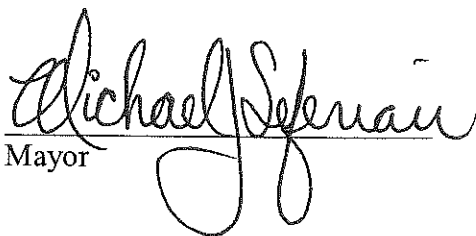
~~Failed this xxxxxxxx day of xxxxxxxxxxxxxxxxxxxxxxx~~


Council President

Attest:

Approved:


Clerk of Council


Mayor

Resolution

~~XXXXXXXXXX~~
Ordinance No. 025-2016 Item No. 025-2016



Board of County
Commissioners
Tina Skeldon Wozniak
President
Pete Gerken
Carol Contrada

October 15, 2015

Tinka Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Subject: Objection to U.S. Environmental Protection Agency Determination Regarding Ohio Environmental Protection Agency's 2014 303(d) List

Dear Ms. Hyde,

The Board of Lucas County Commissioners urges the U.S. Environmental Protection Agency to include the Western Basin of Lake Erie on Ohio's Section 303(d) list, and have also encouraged the Ohio EPA to do the same. A letter to OEPA Director Butler is enclosed.

The challenges associated with harmful algal blooms in Lake Erie are complex as the Western Lake Erie Basin includes multiple local and state jurisdictions, including urban Lucas County at the downstream point, and agricultural, suburban, and rural regions throughout the watershed to the west of the mouth of the Maumee River. While there are solutions proposed or nearing implementation at the state and local level, voluntary measures which are not comprehensive throughout the watershed are insufficient. Decisive and forceful action from the U.S. Environmental Protection Agency is needed. We disagree with USEPA's further deferral from including the waters of the western basin (watershed) of Lake Erie on Ohio's Section 303(d) list.

In deferring to declare the western Lake Erie basin 'Impaired' from nutrients -- more than one year after the statutory deadline for approving or disapproving the list outright -- the Board of Lucas County Commissioners feels that the USEPA is failing to utilize a significant tool, given the USEPA's duty to protect Lake Erie and the people and wildlife which depend upon it. We have seen recent progress in creating TMDLs in surrounding areas, with the Sandusky River as an example, and a TMDL in the works on the Maumee River. For effective watershed restoration, it is vital that we work together at all levels of government to provide a unified approach in the TMDL program, already underway in our region.

While listing the Lake Erie watershed as "impaired" under 303(d) has the potential to yield negative perceptions, nonetheless it is an important first step in addressing watershed restoration in an effective way. This is not a measure that will serve to compete with or compromise local, state, and international collaborative efforts currently underway. We are encouraged by GLWQ efforts, but they lack the force of law. The international agreement toward a 40% reduction in phosphorous between Ohio, Michigan, and Ontario is a start, but it leaves out an essential signatory in Indiana, a significant contributor to the runoff problem.

We feel that the EPA's deferral is inconsistent with prior acknowledgement both of the problem caused by algal blooms and the appropriateness of designating the open waters of the western basin of Lake Erie as "Impaired." In a letter sent to the State of Ohio more than one year ago, the USEPA explained that "the data summarized in

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LUCAS COUNTY



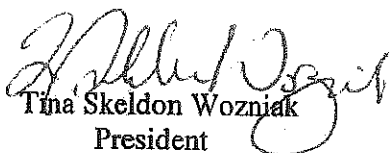
Ohio's 2014 IR [List] and other readily available data" indicate that "the open waters of the Western Basin [of Lake Erie] beyond the defined shoreline area should be listed as 'Impaired' for PDWS [public drinking waters supply]" for microcystin levels in drinking water intakes.¹ Harmful algal blooms produce unsafe levels of microcystin, found throughout the western Lake Erie basin, that not only threaten people's drinking water, but also Lake Erie's \$12.9 billion dollar recreation and tourism economy in Ohio. Additionally, microcystin interferes with the lake's ecology while harming game fish and other wildlife.

The Board of Lucas County Commissioners recently brought these concerns to the attention of Ohio EPA Direct Craig Butler. While we understand the contention that being listed on the 303(d) list may have negative effects, we suggest the contrary. Lucas County experienced firsthand the impact of having no access to safe drinking water for three days in August 2014. It is the opinion of the Lucas County Commissioners, and regional partners in the watershed, that we must acknowledge our challenge and address it directly and forthrightly. Only then can we utilize all of the tools at our disposal – from local, state, and federal levels – to their maximum effectiveness and restore the health of Lake Erie.

There is no reason for delay. The USEPA should act now and declare Western Lake Erie "impaired" so we can begin the TMDL assessment. Adding the open waters of the western basin of Lake Erie to the 303(d) list would trigger actions that would begin to address the problems we face now and lead to the eventual restoration of our water quality to acceptable standards. Moreover, this would provide legally enforceable mechanisms that transcend political administrations. We urge USEPA to reconsider its decision, disapprove Ohio EPA's decision not to declare the open waters of the western basin of Lake Erie "Impaired" from nutrients on the 303(d) list, and develop a TMDL on nutrients for these waters.

Sincerely,

The Board of Lucas County Commissioners


Tina Skeldon Wozniak
President


Pete Gerken
Commissioner


Carol Contrada
Commissioner

Enclosure

cc:

Susan Hedman
Regional Administrator, Region 5
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

¹ Letter from Tinka G. Hyde, Director, Water Division, EPA Region 5, to Brian Hall, Assistant Chief, Division of Surface Water, Ohio Environmental Protection Agency, at 1 (Apr. 15, 2014).



Gina McCarthy
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

Craig Butler
Director
Ohio Environmental Protection Agency
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

MEMORANDUM

TO: MAYOR, COUNCIL, ADMISNITRATION
FROM: SANDY BIHN
SUBJECT: WESTERN LAKE ERIE IMPAIRED WATER RESOLUTION
DATE: FEBRUARY 12, 2016

All:

Attached is information on the Clean Water Act Impaired and TMDL Sections. The primary source of the information is the USEPA web site.

Also attached is the history of the Chesapeake Bay Impaired listing in 1998 and the TMDL that followed in 2010. The source of this information is a power point presentation in December 2015 by Verna Harrison who was with the Maryland Department of Water Quality and is now a consultant in the region.

Please call or email with any questions – sandylakeerie@aol.co 419-691-3788 cell, 419-367-1691.

Sandy

Western Lake Erie Impaired Water Information Web Link

http://iaspub.epa.gov/waters10/attains_nation_cy.control%3Fp_report_type%3DT#imp_water_by_state

1. **Impaired Designation comes from Clean Water Act every two years with state by state submission assessing water quality and submits the assessment to the USEPA region it is located in. Ohio is in USEPA Region V based in Chicago where the director, Susan Hedman resigned over Flint. Susan Hedman, Region V also failed Lake Erie.**
2. **According to the USEPA web site, there are 43,000 waters in the United States that are declared impaired. There are 271 Ohio waters declared impaired. Ohio lists 1,761 TMDL's.**
3. **Ohio has declared 289.5 miles of shoreline of Lake Erie Impaired and recently added the City of Toledo and City of Water Intakes...but has not declared the open waters of Western Lake Erie impaired. Also, Ohio has not declared the Maumee and Sandusky watersheds impaired for nutrients(harmful algae)**
4. **Ohio has spent two years trying to set phosphorus standards as required under the Clean Water Act for small streams – but wants to restrict the small streams to low flow which would not include runoff – LEIA objected – Ohio has no phosphorus standards – Farm Bureau does not want**

From USEPA web site:

Ohio EPA is preparing the 2016 Integrated Report, which fulfills the State's reporting obligations under Section 305(b) (33 U.S.C. 1315) and Section 303(d) (33 U.S.C. 1313) of the Federal Clean Water Act. The report will indicate the general condition of Ohio's waters and list those waters that are currently impaired and may require Total Maximum Daily Load (TMDL) development in order to meet water quality standards.

Major project milestones and expected dates for completion are:

Refine methodologies/compile data	June - October 2015
External Level 3 credible data due to Ohio EPA	July 15, 2015
Prepare list/internal review	October - December 2015
Public notice draft 303(d) list	Spring 2016
Respond to comments/prepare final list	Late Spring 2016
Submit to U.S. EPA Region V for approval	Summer 2016

A TMDL is a pollution budget and includes a calculation of the maximum amount of a pollutant that can occur in a waterbody and allocates the necessary reductions to one or more pollutant sources. A TMDL serves as a planning tool and potential starting point for restoration or protection activities with the ultimate goal of attaining or maintaining water quality standards. Under section 303(d) of the Clean Water Act, states, territories and authorized tribes (included in the term State here) are required to submit lists of impaired waters. These are waters that are too polluted or otherwise degraded to meet water quality standards. The law requires that the states establish priority rankings for waters on the lists and develop Total Maximum Daily Loads (TMDL) for these waters.

Lists of impaired waters and TMDLs are reviewed in EPA's regional offices.

In developing Section 303(d) lists, States are required to assemble and evaluate all existing and readily available water quality-related data and information, including, at a minimum, consideration of existing and readily available data and information about the following categories of waters: (1) waters identified as partially meeting or not meeting designated uses, or as threatened, in the State's most recent Section 305(b) report; (2) waters for which dilution calculations or predictive modeling indicate nonattainment of applicable standards; (3) waters for which water quality problems have been reported by governmental agencies, members of the public, or academic institutions; and (4) waters identified as impaired or threatened in any Section 319 nonpoint assessment submitted to EPA. See 40 CFR 130.7(b)(5).

Impaired Waters and TMDLs Program Overview: Introduction

The Impaired Waters and Total Maximum Daily Load (TMDL) Program is an important component of the Clean Water Act's (CWA) framework to restore and protect our Nation's waters. The program is comprised primarily of a two part process. First, states identify waters that are impaired or in danger of becoming impaired (threatened) and second, for these waters, states calculate and allocate pollutant reduction levels necessary to meet approved water quality standards.

What is Section 303(d) of the Clean Water Act?

The goal of the Clean Water Act (CWA) is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C §1251(a)). Under section 303(d) of the CWA, states, territories and authorized tribes, collectively referred to in the act as "states," are required to develop lists of impaired waters. These are waters for which technology-based regulations and other required controls are not stringent enough to meet the water quality standards set by states. The law requires that states establish priority rankings for waters on the lists and develop Total Maximum Daily Loads (TMDLs) for these waters. A TMDL includes a calculation of the maximum amount of a pollutant that can be present in a waterbody and still meet water quality standards.

Under Section 303(d) of the Act, states are required to evaluate all available water quality-related data and information to develop a list of waters that do not meet established WQS (impaired) and those that currently meet WQS, but may exceed it in the next reporting cycle (threatened). States then must develop a TMDL for every pollutant/waterbody combination on the list. An essential component of a TMDL is the calculation of the maximum amount of a pollutant that can occur in waterbody and still meet WQS. Within the TMDL the state allocates this loading capacity among the various point sources and non-point sources. Permits for point sources are issued through EPA's National Pollutant Discharge Elimination System, or NPDES program.

States are required to update and resubmit their impaired waters list every two years. This process ensures that polluted waters continue to be monitored and assessed until applicable water quality standards are met.

What is a 303(d) list of impaired water?

The term "303(d) list" or "list" is short for a state's list of impaired and threatened waters (e.g. stream/river segments, lakes). States are required to submit their list for EPA approval every two years. For each water on the list, the state identifies the pollutant causing the impairment, when known. In addition, the state assigns a priority for development of Total Maximum Daily Loads (TMDL) based on the severity of the pollution and the sensitivity of the uses to be made of the waters, among other factors (40 C.F.R. §130.7(b)(4)).

In general, once a water body has been added to a state's list of impaired waters it stays there until the state develops a TMDL and EPA approves it. EPA reporting guidance provides a way to keep track of a state's water bodies, from listing as impaired to meeting water quality standards. This tracking system contains a running account of all of the state's water bodies and categorizes each based on the attainment status. For example, once a TMDL is developed, a water body is no longer on the 303(d) list, but it is still tracked until the water is fully restored.

How do states identify impaired waters?

States may use any number of ways to determine whether or not a water body meets the water quality standard. However, federal regulations say states must evaluate "all existing and readily available information" in developing their 303(d) lists (40 C.F.R. §130.7(b) (5)). This means that states cannot select what data/information they use and purposely disregard other. EPA's regulations contain a nonexclusive list of information that must be considered.

What do states need to submit to EPA?

In addition to section 303(d) lists of impaired waters states are required to submit section 305(b) water quality reports to EPA. Section 305(b) reports provide information on the water quality status of all waters in the state, whereas section 303(d) lists are a subset of these waters – those that are impaired by a pollutant and in need of a TMDL. Given that both the 305(b) report and the 303(d) lists are due at the same time (April 1 of every even numbered year), EPA recommends that states combine them into a single "Integrated Report." EPA approves or disapproves the state's 303(d) list of impaired waters needing TMDLs. If EPA disapproves a state's list, EPA is required to identify any additional impaired or threatened waters for the state. In most of these circumstances, EPA partially approves and partially disapproves a list because some waters have been omitted and adds these waters to the state's list.

WHO Recommended Guidelines (for reference) for microcystin(NOAA web site)

Drinking water = 1µg/L Low risk recreational = 2-4µg/L

Moderate risk recreational - 20µg/L High risk recreational = avoid visible scums

USEPA microcystin Health Advisory .3ppb for at risk population ten day average, 1.6ppb for public ten day average

CHESAPEAKE BAY HISTORY

1960s-70s	Visible decline in Bay resources
1976-1982	5-year Scientific study of Bay
1980	Chesapeake Bay Commission established - (State legislative partner)
1983	First Bay Agreement* (Bay Program created; 3 states, D.C., Feds)
1987	Chesapeake Program authorized in CWA, Sec 117
1987	Second Bay Agreement*
1998	2 WQ Goals to Reduce N and P by 40% by 2000; Cap on pollution once 40% goals met; offsets
1998	Chesapeake Bay listed Impaired on Clean Water 303d list - nitrogen, phosphorus, sediment
1999	Amendments to Agreement – Tributary Strategies Detailed State Plans BMPs to reduce N, P, S
2000	Third Bay Agreement *

*Republican Governor Jim Gilmore and others commit to Fishable/Swimmable by 2010 or TMDL

2003	Water quality criteria
2004-5	Jurisdictions adopted WQ standards
2007	EPA and Bay Jurisdictions acknowledge they will not meet goal of de-listing bay by 2010
2008	CBF and others sue EPA for failing to enforce the CWA
2010	Executive Order – goals into 2025
2010	EPA releases TMDLs for the Chesapeake Bay region
2011	Farm Bureau, Builders, et al sue EPA over TMDL
2012	States refine and improve their clean up plans -
2014	Fourth Bay Agreement – Management strategies, Verification, 3 more states
2014	EPA evaluates states' 2011-2013 two year progress
2014	Court affirms legality of Chesapeake TMDL
2015	Appellate Court reaffirms legality of Chesapeake TMDL – Farm Bureau joined by 22 States including Ohio appeal to US Supreme Court – Ohio did not join suit in lower court
2015-7	“Midpoint assessment” of potential to reach 2017/2025 goals
2017	60% of practices in place to meet TMDL
2025	100% practices fully implemented to meet TMDL

TMDL calculates the maximum amount of a specific pollutant that a waterbody can receive and still meet water quality standards.

- Nitrogen- 207 million pounds/year
- Phosphorus- 14.55 million pounds/year
- Sediment- 7,341 million pounds/year

Numeric goals for each state

Reasonable Assurance

Accountability

1. Comprehensive and detailed state-specific plans
2. Deadlines (2017 and 2025)
3. Two-year incremental goals or “milestones”
4. Consequences for failure



Peter/Matt

Board of County
Commissioners
Tina Skeldon Wozniak
President
Pete Gerken
Carol Contrada

October 15, 2015

Director Craig Butler
Ohio Environmental Protection Agency
50 West Town Street, Suite 700
Columbus, OH 43215

Dear Director Butler:

Thank you for taking the time to discuss Lake Erie Water Quality Issues with us. We found the conversation productive, and look forward to further opportunities to share ideas and review concerns. We write to urge you to include the waters of the Western Basin of Lake Erie as "impaired" under the Clean Water Act Section 303(d) list.

Lucas County is in a challenging spot, both literally and metaphorically, of being at the receiving end of dissolved phosphorus runoff with little to no ability to implement changes within the watershed. While Lucas County certainly contributes to the problem, we are an urban community at the downstream end of rural counties to the west. Agriculture is widely considered to be a major factor in dissolved reactive phosphorous runoff, yet we in Lucas County have no jurisdictional authority to act on a local level to regulate agricultural activities or implement programs designed to reduce phosphorus reaching Lake Erie. Thus, from our perspective here at "the end of the line," we believe the most meaningful solution is one which addresses the entire Western Basin of Lake Erie.

A significant tool in watershed restoration and remediation is to identify the region as "impaired" pursuant to the Section 303(d) list under the CWA. By so doing, we will take the necessary first step to establishing a TMDL, as well as triggering other remediation protocols designed specifically to address the health of Lake Erie. As you stated, we already have a TMDL on the Sandusky River and the US EPA is finalizing a TMDL on the Maumee. Clearly you recognize the value of TMDL's for the sub-watersheds; a unified approach to the Western Lake Erie Basin would provide a unified watershed approach to the TMDL program already begun in portions of the watershed.

Listing the Lake Erie Watershed as impaired under the 303(d) list in no way competes with or compromises the GLWQ Annex process or any other domestic action plans. With the critical issue of safe drinking water at stake, we strongly recommend that the Ohio EPA and the US EPA use all the tools at our disposal. While we applaud the collaborative efforts underway through the GLWQ efforts, these do not have the force of law. We are also encouraged by the international agreement between Ohio, Michigan, and the Province of Ontario which calls for a 40% reduction in phosphorus. However, The Maumee River begins in Ft. Wayne, and Indiana is not a signatory, though it is a contributor to the runoff problem. Listing the Western Lake Erie watershed as impaired is a vital part of addressing what is a multi-state challenge.

You also expressed concern about the potential of more severe economic impacts by declaring the watershed "impaired." As the Ohio County who lost drinking water for three days in August 2014, we know about immediate and residual long term negative economic impacts of toxic algal blooms. Lucas County, along with Ottawa and Wood Counties in Ohio and Monroe Counties in Michigan, are partners in a NW Ohio/SE Michigan Comprehensive Economic Development Strategy (CEDS) approved by the EDA in the fall of 2014. This regional CEDS identifies water quality projects as critical to the economic development of the region. It is the opinion of

LUCAS COUNTY



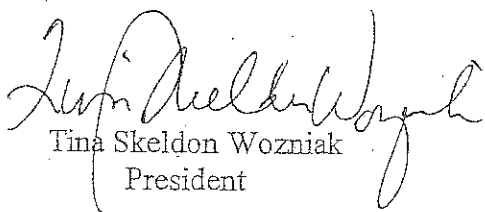
the Lucas County Commissioners that we are in a stronger economic position by acknowledging the challenge through listing the Western Lake Erie Basin on the 303(d) "impaired" list than we would be by not so listing. We need to (1) recognize the problem and (2) utilize all tools at our disposal. As people who live and work here, we believe this is the best approach for the long term economic health of the region. We also believe we know best how to market the region. For example, the current OEPA "dashboard" causes more economic harm than good – it is a daily panic meter that has a chilling effect on residents and tourists alike. A reasoned, legal recognition of the impaired status of the watershed we view as a positive step for the economy.

Finally, The Board of Lucas County Commissioners fully endorses the recommendations found in the IJS Report, *A Balanced Diet for Lake Erie*, and the Lucas County Report, *Moving Forward, Legal Solutions to Lake Erie's Harmful Algal Blooms*. Both those reports, as well as others not detailed here, support the importance of the TMDL programs for the Western Lake Erie Basin. The first step is recognizing, through the Clean Water Act, that the Western Lake Erie Basin belongs on the 303(d) list. There is a disturbing negative connotation of *not* being on the 303(d) list: that the 2014 toxic algal bloom was a onetime event that can be countered by better management of the City of Toledo Water Treatment Plant. While we recognize and support much-needed technology improvements at the water treatment plant, are joint funders of various rate studies and stand at the ready to form a true Section 6119 Regional Water District, we recognize that the health of Lake Erie is the fundamental challenge.

We have enclosed a copy of our letter to the US EPA, Water Division with this letter. We urge you to include the waters of the Western Lake Erie Basin on the CWA 303(d) list as impaired.

Sincerely,

The Board of Lucas County Commissioners


Tina Skeldon Wozniak
President


Pete Gerken
Commissioner


Carol Contrada
Commissioner

Enclosure

Cc:

Tinka Hyde
Director, Water Division
United States Environmental Protection Agency
Region 5
77 West Jackson Blvd.
Chicago, IL 60604